

REMARKS

The present application was filed on September 25, 2003 with claims 1 through 25. Claims 1 through 25 are presently pending in the above-identified patent application. In this response, Applicants propose to amend claim 21.

5 Applicants note that the Examiner indicated during a telephone interview on March 18, 2008 that independent claim 1, as previously amended, would be allowable and note that independent claims 11 and 21 should be allowable for the same reasons.

In the Office Action, the Examiner rejected claims 21-25 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the
10 subject matter which applicant regards as the invention. The Examiner also rejected claims 1-20 under 35 U.S.C. §102(b) as being anticipated by Johnson et al. (European Patent Number EP 1 096 729 A1; hereinafter Johnson). The Examiner indicates that claims 21-25 would be allowable if rewritten to overcome the rejection under 35 U.S.C. §112, second paragraph.

Section 112, Second Paragraph, Rejections

15 Claims 1-25 were under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention 1. Regarding claim 21, the Examiner asserts that it is unclear what is meant by “to increase said retransmission data rate for a subsequent frame,” whether this increase is done after the reduction, whether this increase is progressive, and whether this increase is performed by the
20 rate selection mechanism.

Applicants note that claim 21 has been amended to clarify that the cited step is performed by the rate selection mechanism. Applicants also note that claim 21, as amended, requires that a transmission data rate for a subsequent frame is increased. Thus, the claim clearly requires that the transmission rate is increased. The specification discloses exemplary
25 embodiments; the frame for which the transmission rate is increased and whether the increase is progressive are design choices, as would be apparent to a person of ordinary skill in the art.

Applicants believe that this amendment addresses the Examiner's concerns and respectfully request that the section 112, second paragraph, rejection be withdrawn.

Independent Claims 1, 11 and 21

Independent claims 1, 11, and 21 were rejected under 35 U.S.C. §102(b) as being anticipated by Johnson. Regarding claims 1 and 11, the Examiner asserts that Johnson teaches a rate selection mechanism (FIG. 2; paragraph [0024]) that progressively reduces said retransmission rate (lower data rate) to at least one lower transmission data rates (lower data rate) only for said current frame if an acknowledgement is not received for a current frame (step 405 in FIG. 4; paragraph [0028]; col. 9, line 58, to col. 10, line 1). In the Response to Arguments section of the Office Action, the Examiner asserts that one interpretation of the limitation "...progressively reduces said retransmission data rate to at least one of two or more lower transmission data rates..." is "...progressively reduces said retransmission data rate to one lower transmission data rates." The Examiner asserts that "one suffices 'at least one' in the claim limitation."

As the Examiner acknowledges, Johnson teaches that the transmission data rate of a data packet is reduced from a "higher data rate" to a "lower data rate." Johnson does *not*, however, disclose or suggest that the retransmission data rate is *progressively reduced to at least one of two or more lower retransmission data rates*. Applicants note that the requirement for *two or more lower retransmission data rates* is an affirmative limitation that is *not* disclosed by Johnson. Regardless of whether the progressive reduction is performed to one lower data rate, or to two lower data rates, the requirement for *two or more lower retransmission data rates cannot be read out the claims*. Thus, the Examiner's interpretation that "one suffices 'at least one' in the claim limitation" is *not* correct; the prior art must disclose or suggest *two or more lower data rates* to read on the cited claims. Independent claims 1, 11, and 21 require that the retransmission data rate is progressively reduced to at least one of *two or more lower retransmission data rates*. Support for this limitation can be found on page 2, lines 21-22, and page 3, lines 3-13, of the originally filed disclosure.

Thus, Johnson does not disclose or suggest that the retransmission rate is progressively reduced to at least one of two or more lower retransmission data rates, as required by independent claims 1, 11, and 21, as amended.

Dependent Claims 2-10, 12-20 and 22-25

5 Dependent claims 2-10, 12-20, and 22-25 were rejected under 35 U.S.C. §102(b) as being anticipated by Johnson.

Claims 2-10, 12-20, and 22-25 are dependent on claims 1, 11, and 21, respectively, and are therefore patentably distinguished over Johnson because of their dependency from amended independent claims 1, 11, and 21 for the reasons set forth above, as
10 well as other elements these claims add in combination to their base claim.

All of the pending claims following entry of the amendments, i.e., claims 1-25, are in condition for allowance and such favorable action is earnestly solicited.

If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Examiner is invited to contact the undersigned at
15 the telephone number indicated below.

The Examiner's attention to this matter is appreciated.

Respectfully submitted,



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